

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

TOVIAS DUNTON,
BOP Reg. #54764-019,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

* MOTION TO VACATE
* 28 U.S.C. § 2255
*
*
* CRIMINAL ACTION NO.
* 1:16-CR-215-ELR-AJB-1
*
* CIVIL ACTION NO.
* 1:18-CV-2844-ELR
*
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ORDER

This matter is before the Court for consideration of the Report and Recommendation (“R&R”) of Magistrate Judge Alan J. Baverman. [Doc. 96]. Petitioner filed a *pro se* §2255 Motion. [Doc. 49]. The Government filed a response in opposition, [Doc. 55], and Petitioner filed a reply. [Doc. 57]. Petitioner then filed a supplemental brief through counsel. [Doc. 75]. The Government filed a response in opposition [Doc. 80], and the Petitioner filed a reply. [Doc. 89]. The Court held an evidentiary hearing on one of the grounds of Petitioner’s *pro se* §2255 motion. [Docs. 82 and 90]. The Court ordered Petitioner’s counsel to file a post-hearing brief, but counsel failed to do so. [Docs. 82 and 92]. Judge Baverman recommends that

Petitioner's § 2255 Motion [Doc. 49] be denied and a Certificate of Appealability be denied as well. Judge Baverman also recommends that Petitioner's counseled supplemental petition [Doc. 75] be dismissed as untimely.

After conducting a careful and complete review of a magistrate judge's findings and recommendations, a district court judge may accept, reject, or modify a magistrate judge's R&R. 28 U.S.C. § 636(b)(1)(C); Williams v Wainwright, 681 F.2d 732 (11th Cir. 1982). No objections to the magistrate judge's R&R have been filed, and therefore, the Court has reviewed the R&R for plain error. See United States v Slay, 714 F.2d 1093, 1095 (11th Cir. 1983). The Court finds no error.

Accordingly the Court **ADOPTS** the R&R [Doc. 96] as the Opinion and Order of this Court. For the reasons stated in the R&R, the Court **DENIES** Petitioner's Motion to vacate sentence under 28 U.S.C. § 2255. [Doc. 49]. Additionally, the Court **DECLINES** to issue a certificate of appealability because after considering 28 U.S.C. § 2253(c)(2), the Court finds that Petitioner has not made a substantial showing of the denial of a constitutional right. The Court also **DISMISSES** as untimely the supplemental petition. [Doc. 75]. The Court **DIRECTS** the Clerk to **CLOSE** the civil

case associated with Petitioner's § 2255 Motion: Civil Action No. 1:18-CV-2844-ELR.

SO ORDERED, this 28th day of July, 2021.



Eleanor L. Ross
United States District Judge
Northern District of Georgia